

INDEX

SUBJECT INDEX

	Page
Petition for Writ of Appeal	1
Statement of Matter	1
Reasons Relied on for Allowance of this Writ....	3
Brief in Support of This Petition	7
Opinion of the Court below	7
Jurisdiction	7
Statement of Case	8
Specification of Error	8
Argument	8
1. Reference to Selective Training and Service Act of 1940, Section 8(i), and Effect of said Act	8
2. Special Damages Need Not Be Alleged.....	9
3. Only Question is the Accepted Meaning of “Trojan Horse”	9
Summary	9
To Preserve the Right to Trial on Merits.....	
To Overcome Dangerous Precedent.....	
To Preserve Elementary Rights of a Citizen....	
That Petitioner’s Americanism extends back through more than 300 years of American Patriots, back into earliest Colonial Times, and Mr. Dies must not be permitted to libel it.	
That Mr. Dies respond in damagees, else prove his aspersions.	
That Mr. Dies be not permitted to change his own libelous definition of “Trojan Horse”.	
That the decision of the United States Court of Appeals for the District of Columbia be re- viewed and reversed	10

CASE CITED	Page
<i>Meyerson v. Hurlbut</i> , 68 App. D. C. 360; 98 Fed. 2nd 232	9
STATUTE CITED	
Selective Training and Service Act of 1940, Sec- tion 8(i)	8

Supreme Court of the United States

OCTOBER TERM, 1942

No.

J. S. POTTS, Trading as Southern Progress
Publishing Company

APPELLANT

vs.

MARTIN DIES
APPELLEE

PETITION FOR WRIT OF APPEAL

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, J. S. Potts, trading as Southern Progress Publishing Company, respectfully prays for a writ of appeal herein, to review a certain final decision of the United States Court of Appeals for the District of Columbia in the above-captioned cause, petition for a rehearing having been denied by said court on January 20th, 1943, and this petition being presented by your petitioner prior to April 20th, 1943.

A.

SUMMARY STATEMENT OF MATTER

The case, briefly stated, is as follows:

Your petitioner sued Martin Dies for libel. The allegation of the complaint was that J. S. Potts owns Southern Progress Publishing Company and publishes a magazine of general circulation called "Southern Progress". On October 22, 1940, in a publication called "The Trojan Horse in America" Martin Dies used the following language:

"We have examined some of the criteria by which the Communist Trojan Horse may be identified. Let us now consider the marks of the Nazi Trojan Horse.

"1. Does the organization through its leaders and literature laud the achievements of Adolf Hitler? Take, for example, an illustration from a magazine which bears the name Southern Progress. 'Adolf Hitler is the George Washington of Germany (and maybe, of all Europe)', declared this obscure paper. Ironically, the same publication announced Hitler's contribution to peace, only five months before the outbreak of the present European war, in the following language: 'The banning of Jewish (sic) communist activities in Germany and other countries reduced war possibilities to the merest minimum'".

To this complaint defendant, Dies, responded by a motion to dismiss on various grounds, which motion to dismiss was sustained by the honorable judge of the District Court of the United States for the District of Columbia, on the ground that the language used was within the category of "fair literary comment." This was sustained by the United States Court of Appeals for the District of Columbia on December 29, 1942, on the same ground. Subsequently, on January 12th, 1943, your petitioner submitted a petition for a rehearing, which was denied. It is from final order denying petition for rehearing, and inclusive of the original decision of the court that the petitioner now seeks relief.

B.

**REASONS RELIED ON FOR THE
ALLOWANCE OF THIS WRIT**

Already two briefs and one opinion citing several cases have been written. The essence of the matter, however, requires little argument. The decision of the court below (as well as the District Court) is substantially based upon a misconception of the term "Nazi Trojan Horse". Therefore, it is the contention of your petitioner that the law cited in the opinion of the court below is entirely inapplicable, because it has *no relation to the facts*. Your petitioner will refer to only certain matters coming under the judicial notice of this honorable court. The term "Trojan Horse" relates back to the *Odyssey* of Homer and directly refers to the introduction of Greek soldiers within the walls of Troy, concealed in a wooden horse. The modern use of the term first arose in connection with the report of Georgi Dimitrov to the Seventh World Congress of the Communist International and directly referred to absolutely similar tactics to be followed by the members of the Communist International. The whole history of the term shows that it is not used as a means of dictating any particular opinions but is used to characterize deceptive tactics on the part of a person who seeks to undermine democratic institutions, and is liable not only to criminal punishment now but was subjected to deprivations of employment under the provisions of the Selective Service Act of 1940.

But the defendant's own book is decisive of this question, and decisive against the contention of defendant. The first chapter of said book contains the chapter heading and is devoted to the thesis "The whole world becomes a modern Troy". After referring to Dimi-

trov's use of the story of the Trojan Horse (on page 4 of "The Trojan Horse in America") it states that Dimitrov advocated use of Trojan Horse methods for members of the Communist International. On page 7 Mr. Dies defined the Nazi version of the Trojan Horse as the same in substance as that of the Communist International. But the most important sentence is contained on page 11, and we quote Mr. Dies' own definition of a Trojan Horse: "It is important that we make distinction between the various types of Trojan Horse or—as some prefer to call them—"Fifth Column Organizations". Even the subtle casuistry of Martin Dies cannot do away with the plain definition that he himself has attached to the term "Trojan Horse". The court will take judicial knowledge of the fact that the term "Fifth Column" which is used by Mr. Dies as synonymous with Trojan Horse, was first used by General Franco in Spain when he said "there are four columns moving on Madrid and a fifth column inside the city." Petitioner relies upon the well-known rule of law of libel and slander that, since he has stated the quotation is from a work, he has a right to rely in argument upon the context of said work, and particularly that he has a right to rely upon the definition of Trojan Horse given by Mr. Dies himself in the work in question.

This is the whole case. Nothing needs to be added to it. Upon the facts springing out of the judicial notice of this court can be clearly seen that the issue should have been submitted to a jury on its merits.

WHEREFORE, your petitioner respectfully prays that a writ of appeal be issued out of and under the seal of the Supreme Court of the United States; that the decree of the United States Court of Appeals for the

District of Columbia in this cause be reversed by this honorable court; that said cause be sent back to the District Court of the United States for the District of Columbia for a hearing upon its merits; and that your petitioner may have such other, further and general relief in the premises as to this honorable court may seem meet and just.

And this your petitioner prayeth and ever will pray.

J. S. Potts, T/A Southern Progress

Publishing Company,

Petitioner.